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Attorneys for Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re:

**DOYLE D. HEATON and
MARY K. HEATON,**

Debtors.

Case No.: 10-40297 EDJ

Chapter 11

**MOTION OF DEBTORS PURSUANT
TO BANKRUPTCY RULE 9019(a) FOR
APPROVAL OF SETTLEMENT AND
COMPROMISE WITH ANTHONY &
ANGELA BILICH**

[Pursuant to B.L.R. 9014-1, no hearing
unless opposition filed or hearing
requested]

Doyle D. Heaton and Mary K. Heaton, a married couple (together, the “Debtors”) hereby move the Court (the “Motion”) pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for approval of a settlement and compromise (the “Agreement”) with Anthony & Angela Bilich (together, the “Lender”). A true and correct copy of the Agreement is attached hereto as Exhibit A. A proposed form of order (the “Order”) approving the Agreement is attached hereto as Exhibit B.

RELIEF REQUESTED

By the Motion, the Debtors seek authorization to transfer the deed (the “Deed”) of certain real property located at 12972 Muhlbach Way, Truckee, California (the “Property”) to the Lender in lieu of foreclosure. In exchange for transfer of the Property, the Lender agrees that all claims arising under that certain promissory note of the Debtors in the principal amount of \$220,000 (the “Note”) will be released.

Title to the Property is currently held by Heaton Enterprises I, LLC (“Heaton Enterprises”),¹ which is wholly owned by the Doyle D. Heaton Qualified Personal Residence Trust Truckee (the “Trust”). The Trust and its assets are not property of the estate under section 541 of the Bankruptcy Code. Nevertheless, the Debtors believe that the most prudent course of action is to disclose this proposed transaction and out of an abundance of caution seek the Court’s authorization to the extent necessary even though the Trust’s assets are not property of the estate.

As of March 10, 2010, the total amount outstanding under the Note, inclusive of unpaid interest and fees, is approximately \$244,500. The Debtors estimate that the fair market value of the Property is approximately \$250,000. The Debtors believe that the fair market value of the Property is less than the total amount outstanding under the Note when potential brokers’ fees, closing costs, and related expenses are taken into account.

The Debtors believe that the proposed settlement is fair, reasonable, and in the best interest of the estate because there is little or no equity in the Property and the Debtors are not in a position to service the debt thereon. Moreover, the satisfaction of the Lender’s claim under the Note will eliminate any risk associated with having deficiency claims asserted against the estate by the Lender on account of the Note.

This Motion is based on the memorandum of points and authorities and the declaration of Doyle D. Heaton submitted in support hereof.

WHEREFORE, the Debtors respectfully request that the Court grant this Motion in its entirety and enter the Order approving the Agreement, and granting such other and further relief to which the Debtors may be entitled.

¹ In the Schedules, the Property was inadvertently listed as owned by Heaton Enterprises III, LLC.

Dated: June 14, 2010

PACHULSKI STANG ZIEHL & JONES LLP

By /s/ Maxim B. Litvak
Maxim B. Litvak
Attorneys for Debtors
and Debtors in Possession

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EXHIBIT A

(Agreement)

Agreement and Release

This Agreement and Release (“Agreement”) is entered into as of May __, 2010 by and among Doyle D. Heaton (“Borrower”), Heaton Enterprises I, LLC (“Heaton LLC”), a limited liability company, and Anthony & Angel Bilich (“Lender” and together with Borrower and Heaton LLC, the “Parties”), regarding a certain loan obligation of Borrower to Lender.

A. On January 11, 2010 (the “Petition Date”), Doyle D. Heaton and Mary K. Heaton, a married couple (together, the “Debtors”), filed a joint voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Since the Petition Date, the Debtors have continued in possession of their properties and the management of their assets as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. On January 3, 2006, the Borrower purchased the property located at 12972 Muhlbach Way, Truckee, California (the “Property”). Borrower financed the purchase price of the Property pursuant to a certain promissory note of the Debtors in the original principal amount of \$220,000 (the “Note”). The Debtors’ obligations under the Note are secured by the deed for the property. As of March 10, 2010, the total amount outstanding under the Note, inclusive of unpaid interest and fees, is approximately \$244,500.

C. The Note is secured by that certain deed of trust, dated December 28, 2005 (the “Deed”), executed by Doyle D. Heaton, as trustor in favor of Lender, which Deed was recorded in the Official Records of Nevada County, California as Instrument No. 2006-0000020-00 on January 3, 2006. The Deed is annexed hereto as Exhibit A. The Deed encumbers the Property located in the City of Truckee, County of Nevada, State of California, having a legal description as follows:

“PARCEL 2:

Lot 300, of Tahoe Donner Unit No. 10, as shown on the Official Map thereof, filed in the Office of the Nevada County Recorder on July 5, 1973, in Book 4 of Subdivisions at Page 55. (APN: 45-510-30-000) (“Property”).”

D. There are no guaranties of the indebtedness evidenced by the Note or Deed. After its acquisition, the Property was subsequently transferred to the Heaton LLC. Heaton LLC is an affiliate of Borrower.

E. As set forth herein, Borrower, Heaton LLC, and Lender believe that it would be in their best interest for Lender to accept Deed in lieu of foreclosure in total satisfaction of Borrower’s obligations under the Note and all loan documents given by Borrower in connection with the Note including the Deed (collectively “Loan Documents”).

NOW, THEREFORE, upon the mutual promises, covenants, and agreements set forth herein, and for other good and variable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

1. Upon Borrower’s and Lender’s mutual execution of this Agreement, Borrower’s delivery to Lender of the Deed to the Property, executed by Heaton LLC, and the Court’s approval of this Agreement, Lender agrees that all of Borrower’s debts, obligations, costs and charges secured by the Deed and all other obligations of Borrower to Lender under the Note and all Loan Documents, including the Deed, are fully satisfied and discharged and Lender agrees that it may not assert any claims against Borrower or Heaton LLC for any and all obligations arising under the Note, Deed, or the Loan Documents.

2. This Agreement may be executed in multiple counterparts, any of which may be transmitted by facsimile, and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

3. This Agreement and all the provisions hereof shall be binding upon and shall inure to the benefit of all the Parties, and each of their respective executors, heirs, successors and assigns.

4. This Agreement constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes any prior understandings, agreements or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

5. This Agreement shall not be modified, altered, amended or vacated without written consent of all parties hereto, subject to Court approval.


6. This Agreement and the rights and obligations of the parties hereto will be governed by the laws of the State of California.

[Remainder of page intentionally left blank]

7. The Court shall retain jurisdiction with respect to any disputes arising from or other actions to interpret, administer or enforce the terms and provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

BORROWER:


Doyle D. Heaton

HEATON LLC:

HEATON ENTERPRISES I, LLC

By: _____
Title: _____

LENDER:

By: _____
Anthony Bilich

LENDER:

By: _____
Angela Bilich

7. The Court shall retain jurisdiction with respect to any disputes arising from or other actions to interpret, administer or enforce the terms and provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

BORROWER:

Doyle D. Heaton
Doyle D. Heaton

HEATON LLC:

HEATON ENTERPRISES I, LLC

By: BRANDON J. CINTULA
Title: Senior Vice President
& Senior Trust Officer

LENDER:

By: _____
Anthony Bilich

LENDER:

By: _____
Angela Bilich

7. The Court shall retain jurisdiction with respect to any disputes arising from or other actions to interpret, administer or enforce the terms and provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

BORROWER:

Doyle D. Heaton
Doyle D. Heaton

HEATON LLC:

HEATON ENTERPRISES I, LLC

By: _____
Title: _____

LENDER:

By: Anthony Bilich
Anthony Bilich

LENDER:

By: Angela Bilich
Angela Bilich

EXHIBIT A

(Deed)

[AVAILABLE UPON REQUEST]

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EXHIBIT B
(Proposed Order)

Debra I. Grassgreen (CA Bar No. 169978)
Maxim B. Litvak (CA Bar No. 215852)
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NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re:

DOYLE D. HEATON and
MARY K. HEATON,

Debtors.

Case No.: 10-40297 EDJ

Chapter 11

ORDER APPROVING MOTION OF
DEBTORS OF SETTLEMENT AND
COMPROMISE WITH ANTHONY &
ANGELA BILICH

[No Hearing Required]

The Court has considered the *Motion of Debtors Pursuant to Bankruptcy Rule 9019(a) for Approval of Settlement and Compromise with Anthony & Angela Bilich* (the “Motion”).² It appears that due and sufficient notice of the Motion has been provided under the circumstances. It further appears that the relief requested in the Motion is reasonable and in the best interest of the estate.

After due deliberation and sufficient cause shown,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. Pursuant to Federal Rule of Bankruptcy Procedure 9019, the *Agreement and Release* (the “Agreement”), between the Debtors and Anthony & Angela Bilich (together, the “Lender”) and attached to the Motion as Exhibit A, is approved in its entirety. The Debtors are authorized and

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

1 directed to enter into and to perform under the Agreement.

2 3. Upon consummation of the Agreement, the Lender shall have no claims against the
3 Debtors arising under the Note or in any way relating thereto.

4 4. This Order is effective immediately. The Court shall retain jurisdiction to hear and
5 determine all matters arising from or related to the implementation, interpretation or enforcement of
6 this Order.

7 ***END OF ORDER***
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COURT SERVICE LIST

Anthony Bilich
Preferred Financial
11 Crow Canyon Ct, Ste 100
San Ramon, CA 94583

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